RECENT CASES

ADMIRALTY — JURISDICTION — TORT. — A marine cable resting on the bottom under navigable waters and supported at each end upon the shore was negligently injured by a vessel. *Held*, that a court of admiralty has jurisdiction. *The Toledo*, 242 Fed. 168.

If a tort occurs upon the high seas or navigable waters it is cognizable in admiralty. Locality determines jurisdiction. *The Plymouth*, 3 Wall. (U. S.) 20; *Hermann* v. *Port Blakeley Mill Co.*, 69 Fed. Rep. 646. This test does not limit admiralty jurisdiction to purely maritime acts. A tort action might be entertained which had no maritime flavor apart from the bare fact of occurring on the water. Such a case has never come before the Supreme Court. See *Atlantic Transport* v. *Imbrovek*, 234 U. S. 52, 60. But the Circuit Court of Appeals in one instance has denied jurisdiction where the act did not have a maritime character. *Campbell* v. *Hackfeld*, 125 Fed. 696. Moreover, the established criterion fails to include all maritime torts by excluding injuries by a vessel to things on land. *The Plymouth*, *supra*; *Cleveland Terminal R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316. This would deny the court jurisdiction in the principal case. Exception to the general rule is made in case of injury to a beacon, as being historically an aid to navigation. *The Blackheath*, 195 U. S. 361. Unless a marine cable is made a further exception, the principal case cannot be supported. A test based solely on the nature of the act would be more satisfactory, at once excluding the non-maritime and including the maritime. See 18 HARV. L. REV. 299.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL — FICTITIOUS PAYEE — FORGERY OF DRAWER'S SIGNATURE AND PAYEE'S INDORSEMENT BY SAME PERSON. — An employee of an officer authorized to draw on the United States Treasury forged his master's name as drawer, payee, and indorser to a regulation draft and cashed it at a bank, which indorsed it to defendant bank, a holder in due course. The United States having paid the draft, sued to compel repayment. *Held*, the United States cannot recover. *United States* v. *Chase National Bank*, 241 Fed. 535.

The drawee cannot recover money paid to a holder in due course on a forged draft. *Price* v. *Neal*, 3 Burr. 1354. The United States, as drawee, is no exception to this rule. *United States* v. *New York Bank*, 219 Fed. 648. The forged indorsement of a genuine order instrument conveys no title; therefore, the drawee can recover a payment made to a holder in due course who derived his alleged right through the forgery. *Horstman* v. *Henshaw*, 11 How. (U. S.) 177. This has been supported on the ground that the drawee remains liable to the true owner either on the instrument or for conversion. See James Barr Ames, "The Doctrine of *Price* v. *Neal*," 4 HAR. L. REV. 297, 307. It follows that, since in case of a forged indorsement of a forged draft there can be no true owner to hold the drawee liable, the drawee cannot compel repayment from the holder in due course. *State Bank* v. *Cumberland, etc. Trust Co.*, 168 N. C. 605, 85 S. E. 5. In the principal case the court treats the instrument as not existing until the false indorsement and delivery; it is, therefore, similar to the original transfer of a forged draft, and payment to a holder in due course within the *Price* v. *Neal* doctrine. The pivotal feature of the case is that the same person forged both the drawer's signature and the payee's indorsement, thus proving that as actual drawer he knew and intended the payee to be fictitious. Therefore, the instrument was payable to bearer, and the indorsement immaterial, since the title was not derived through it, but by delivery. See BRANNAN'S NEGOTIABLE INSTRUMENTS LAW, sec. 9, sub-div. 3. It is the intent of the actual

drawer that controls the fictitious character of the payee; not the intent of the drawee, as erroneously stated in this case. *Trust Company of America* v. *Hamilton Bank*, 127 App. Div. (N. Y.) 515. It follows that payment having been made to the party entitled, the drawee cannot recover. *Bartlett* v. *Chicago First National Bank*, 156 Ill. App. 415, 247 Ill. 490, 93 N. E. 337.

CARRIERS — FEDERAL REGULATION — RIGHT OF COUNTERCLAIM IN ACTION FOR CHARGES. — In an action by an interstate carrier to recover freight charges, the shipper counterclaimed for damages occasioned to the freight during transportation. The plaintiff demurred to the counterclaim on the ground that it was contrary to Section 6 of the Interstate Commerce Act, which provides that no carrier shall "charge or demand or collect or receive a greater or less or different compensation . . . than the rates, fares, and charges which are specified" in the published schedule. (34 Stat. at L. 584.) *Held*, demurrer overruled. *Pennsylvania R. Co.* v. *Bellinger*, 166 N. Y. Supp. 652.

The Supreme Court has interpreted the section referred to to mean that the carrier cannot accept anything but currency in payment for freight. *Louisville, etc. R. Co.* v. *Mottley*, 219 U. S. 467; *Chicago, etc. Ry. Co.* v. *U. S.*, 219 U. S. 486. It has been held, therefore, that to allow a counterclaim would be contrary to the intention of the Act and would open the door to a renewal of the old methods of rebate and discrimination. *Illinois Central R. Co.* v. *Hoopes & Sons*, 233 Fed. 135; *Chicago, etc. Ry. Co.* v. *Stein*, 233 Fed. 716; *Johnson-Brown Co.* v. *Delaware, etc. R. Co.*, 239 Fed. 590. These decisions were based on a ruling of the Interstate Commerce Commission, since withdrawn, and on a number of cases involving private agreements. I. C. C. CONFERENCE RULINGS, No. 48, March 10, 1908; No. 323, June 8, 1911; *Louisville, etc. R. Co.* v. *Mottley, supra; Chicago, etc. Ry. Co.* v. *U. S., supra; N. Y. Central, etc. R. Co.* v. *Gray*, 239 U. S. 583. While a compromise out of court is obviously illegal, there is no reason why the court, having all of the parties before it, should not combine their several disputes in one proceeding; for if the parties really intend to evade the Statute they can do so as easily through the medium of two lawsuits as they could by one. The better opinion, therefore, would seem to be that the counterclaim should be allowed. *Wells Fargo & Co.* v. *Cuneo*, 241 Fed. 727; *Battle* v. *Atkinson*, 9 Ga. App. 488, 71 S. E. 775.

CARRIERS — LIENS — FREIGHT PAYABLE IN ADVANCE — EFFECT OF ABANDONMENT OF VOYAGE ON LIENS. — The *Appam*, a British merchant vessel, was captured by a German man-of-war and brought to Hampton Roads. Restitution of ship and cargo was decreed because of a breach of American neutrality. The shipowners bring a libel to enforce a lien on the cargo for freight. By the bill of lading freight was to be considered earned upon shipment, ship or goods lost or not lost, and there was to be a lien for all charges whether payable in advance or not. *Held*, that there is no lien. *The Appam*, 243 Fed. 230 (U. S. Dist. Ct., S. D., N. Y.).

Freight payable in advance is not protected at the common law by a lien as a legal incident thereto. *How* v. *Kirchner*, 11 Moo. P. C. 21; *Kirchner* v. *Venus*, 12 Moo. P. C. 361. But see CARVER, CARRIAGE OF GOODS BY SEA, 4 ed., § 663. Hence the only lien arising in this case is a lien by express agreement of the parties. *Kirchner* v. *Venus*, *supra*. The contract of affreightment is abrogated when the contemplated voyage is abandoned, whatsoever the cause of abandonment. *Sampayo* v. *Salter*, 1 Mas. (U. S. Circ. Ct.) 43; *Metcalfe* v. *Britannia Ironworks Co.*, 2 Q. B. D. 423. This operates to destroy the lien, and in the usual case would also prevent the accrual of liability. *St. Enoch Shipping Co.* v. *Phosphate Mining Co.*, [1916] 2 K. B. 624; *Richardson* v. *Young*, 38 Pa. St. 169. But where payment is to be made as in the principal case, a debt